

and, for taxable years ending after 1955, the services are not performed in the active military or naval service of the United States; or

(b) He carries on a trade or business outside the United States (other than the performance of services as an employee) the net income or loss of which is not includable in computing his net earnings from self-employment (as defined in § 404.1050) for a taxable year and would not be excluded from net earnings from self-employment (see § 404.1052) if the trade or business were carried on in the United States. When used in the preceding sentence with respect to a trade or business, the term *United States* does not include the Commonwealth of Puerto Rico, the Virgin Islands and, with respect to taxable years beginning after 1960, Guam or American Samoa, in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands and, with respect to taxable years beginning after 1960, Guam and American Samoa), and the term *trade or business* shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954.

**§ 404.420 Persons deemed entitled to benefits based on an individual's earnings record.**

For purposes of imposing deductions under the annual earnings test (see § 404.415) and the foreign work test (see § 404.417), a person who is married to an old-age insurance beneficiary and who is entitled to a mother's or father's insurance benefit or a child's insurance benefit based on the child's disability (and all these benefits are based on the earnings record of some third person) is deemed entitled to such benefit based on the earnings record of the old-age insurance beneficiary to whom he or she is married. This section is effective for months in any taxable year of the old-age insurance beneficiary that begins after August 1958.

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**§ 404.421 Deductions because beneficiary failed to have a child in his or her care.**

Deductions for failure to have a child in care (as defined in subpart D of this part) are made as follows:

(a) *Wife's or husband's insurance benefits.* A deduction is made from the wife's or husband's insurance benefit to which he or she is entitled for any month if he or she is under age 65 and does not have in his or her care a child of the insured entitled to a child's insurance benefit. However, a deduction is not made for any month in which he or she is age 62 or over, but under age 65, and there is in effect a certificate of election for him or her to receive an actuarially reduced wife's or husband's insurance benefit for such month (see subpart D of this part).

(b) *Mother's or father's insurance benefits—(1) Widow or Widower.* A deduction is made from the mother's or father's insurance benefit to which he or she is entitled as the widow or widower (see subpart D of this part) of the deceased individual upon whose earnings such benefit is based, for any month in which he or she does not have in his or her care a child who is entitled to a child's insurance benefit based on the earnings of the deceased insured individual.

(2) *Surviving divorced mother or father.* A deduction is made from the mother's or father's insurance benefit to which he or she is entitled as the surviving divorced mother or father (see subpart D of this part) of the deceased individual upon whose earnings record such benefit is based, for any month in which she or he does not have in care a child of the deceased individual who is her or his son, daughter, or legally adopted child and who is entitled to a child's insurance benefit based on the earnings of the deceased insured individual.

(c) *Amount to be deducted.* The amount deducted from the benefit, as described in paragraphs (a) and (b) of this section, is equal to the amount of the benefit which is otherwise payable for the month in which she or he does not have a child in his or her care.